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SECURITY COUNCIL
Fifty-second year

Letter dated 7 July 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General

I enclose herewith Israel's response to the report submitted in accordance with General Assembly resolution ES-10/2 (A/ES-10/6-S/1997/494), expressing Israel's serious reservations regarding the content and the tone of the report.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under item 37 of the preliminary list, and of the Security Council.

(Signed) David PELEG
Ambassador
Chargé d'affaires

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ANNEX

The response of Israel to the report submitted pursuant to General Assembly resolution ES-10/2

General comments

1. Israel views the report submitted pursuant to resolution ES-10/2 (A/ES-10/6-S/1997/494) with serious concern, both in view of its substantive content and the hostile and one-sided tone in which it is written.

2. It was clear that the convening of the emergency special session, a mechanism not used for 15 years and intended only to deal with "threats to international peace and security", as a response to the building of a housing project in Jerusalem, was a purely political exercise. Similarly, the resolution adopted at that session, which sought to blame Israel unilaterally for the breakdown in the peace process and to distort the principles on which that process is based, was a predictable result of the exercise. However, Israel had hoped and expected that a report bearing the imprimatur of the Secretary-General would take some pains to reflect the full scope and complexity of the situation.

3. Regrettably, far from "monitoring" the situation, as requested in the resolution, the report merely provides a platform for unsubstantiated allegations against Israel, which are presented without question or criticism. It makes no attempt to distinguish between fact and opinion. It is rife with political assertions and frequently prejudges issues agreed by the parties to be dealt with in face-to-face negotiations.

4. Moreover, while the task assigned to the report was given the widest possible interpretation wherever allegations against Israel were concerned, those aspects of the resolution that might have given a more balanced picture were conveniently ignored.

5. Thus, while paragraph 10 of the resolution stressed the need for scrupulous implementation of agreements, the report focuses exclusively on allegations of breaches by Israel. The Palestinian side continues to ignore its obligations, including the commitment to amend the PLO Covenant, which calls for the destruction of Israel by armed struggle, and the commitment to take measures in the fight against terrorism, including the prosecution of terrorists, the transfer of suspects and the confiscation of illegal firearms. To the contrary, it has frequently been involved in the incitement of violence and the attempt to frustrate the resolution of outstanding issues through negotiation. The authors of the report, who interpreted their task so widely in other areas, apparently felt that reference to such matters was beyond its scope.

6. Similarly, the implementation of paragraph 12 of the resolution, rejecting terrorism in all its forms and manifestations, was not considered in the report to be worthy of attention.

7. The effect of such a document can only be to encourage further those on the Palestinian side who believe that there is no need to sit at the negotiating table when international forums are prepared to abet its attempts to bypass the peace process. Members of the United Nations should not delude themselves that a document of this nature can play any constructive role whatsoever in bringing the parties to a resolution of the differences between them.

Sources of information

8. The report claims to be based on "reliable sources available to the United Nations at Headquarters and in the field". These reliable sources are never identified. However, Israel knows for a fact that the sources available to the United Nations "in the field" were United Nations agencies and representatives operating in the region that were employed to provide information. This is quite clearly beyond their mandate, and raises concerns that the assistance and funding provided by United Nations Member States to enable such agencies to help refugees, coordinate aid projects and so on, have instead been used for political ends.

9. Most of the data presented in the report was extracted from uncorroborated press reports. Israel has learned that the references to these unreliable sources were deliberately deleted by the report's authors. Moreover, despite the unsubstantiated and contentious nature of the "facts" reported, none of the allegations were presented to Israel for verification or comment.

Scope of the report

10. The substantive part of the report bears little relation to the task assigned to the Secretary-General in the resolution. The Secretary-General was requested "to monitor the situation and submit a report on the implementation of the present resolution". The request was not to conduct a survey of Palestinian public opinion, not to take a one-sided position on issues agreed to be negotiated between the parties and certainly not to provide an unquestioning platform for partisan political views. The report makes no attempt to distinguish between fact and opinion and is rife with value judgements and political insinuation. Sadly, the result tells the reader far more about the political bias of the authors of the report than about the issues it was asked to cover.

The Har Homa building project

11. In one of its many value judgements the report states, without any apparent basis, that the building of homes in Har Homa is "viewed as particularly serious". It goes on to discuss the project under a number of headings: political, geographical, demographic, economic, and the effect on the peace process.

Political

12. In the guise of citing unidentified Palestinians, the report makes a number of political assertions that are not only far from the task assigned by the resolution, but undermine any claim the report may lay to objectivity. The

report cites Palestinians who "point out that such a move prejudices final status negotiations". Were the building of homes to be considered prejudicial to the permanent status negotiations, then neither side would be allowed to build during the interim period. This is clearly not the case. The Interim Agreement gave the Palestinian Council wide powers in the sphere of building, planning and zoning. At the same time, it does not contain any provision prohibiting or restricting urban construction or any other building projects by Israel. In fact, the report ignores the only factor that is genuinely prejudicing the permanent status negotiations - the failure of the Palestinian side to come to the negotiating table.

13. In another blatantly political determination, the report asserts that the Har Homa development "is seen as closing the door on what Palestinians unanimously expect to be the future capital of a Palestinian State - East Jerusalem". The relevance of this sentence to the report's stated task is beyond comprehension. Even if it were relevant, one would have thought that "unanimous" Palestinian aspiration to a capital in East Jerusalem should have been matched by a reference to the similarly widespread Israeli consensus that Jerusalem, undivided, will remain Israel's capital.

14. Though there would be no way for the reader of the report to know this, the Har Homa project falls entirely within the municipal boundaries of Jerusalem, on land the vast majority of which (78 per cent) was expropriated from Jewish owners. Nor would the reader be aware that the project is part of a plan to build 20,000 housing units for the Jewish sector and 8,500 housing units for the Arab sector - maintaining the current balance of population in the city.

Geographical

15. In yet another unfounded and judgemental assertion, the report charges that the Har Homa project is "a final step towards the isolation of Jerusalem from the rest of the West Bank". In fact, the project is intended to serve the growing needs of Israel's largest city, which is expected to grow from 500,000 to 800,000 over the next few years. The project is to be accompanied by significant improvements in roads and infrastructure, which will improve both the quality of life for all Jerusalem's residents and access between Arab centres of population.

Demographic

16. In alarmist tones, the report warns that "projections" indicate that the project will result in the transfer of "some 50,000 Jewish settlers" from Israel into the area. The source of these projections is unclear but even a cursory calculation, arriving at an occupancy rate of over 10 people per unit, should have cast doubt on those figures.

17. In fact, the report's assertions that the project will further alter the demographic character of the city are unfounded. The Jewish population of Jerusalem has constituted a majority for over a hundred years and the demographic balance of Jerusalem has remained almost unchanged since 1967. In fact, since 1967, the ratio of Jews to Arabs (74.2:25.8) has changed in favour

of the Arab population and is today 71:29. It is estimated, that by 2010 the Arab population of Jerusalem will rise to one third.

Economic

18. The report charges that the Har Homa project "is expected to have damaging effects on an already devastated Palestinian economy". No authority for this analysis is cited, but the clear implication is that the Palestinian economy has been devastated by Israeli policies. If it was felt necessary to comment on the parlous economic state of the Palestinian economy, one might have thought that the report would have considered making reference to the Palestinian Monitoring and Audit Department report of 23 May 1997, which revealed that 310.9 million dollars of donor contributions, channelled through Palestinian leadership, never met their destination, or to the disastrous economic effects of Palestinian terrorism, which triggers closures and deprives thousands of Palestinians of their livelihood.

19. Also in the economic context, the report refers to "the losses suffered by Palestinians, whose land has been acquired". Under Israeli law, the owners of land expropriated for any reason are entitled to full compensation. To date, a total of 6.7 million dollars has been paid as compensation to those Har Homa landowners who have requested it. Although aware of this right, none of the Arab landowners in question have approached the Israel Lands Authority to avail themselves of this statutory compensation, apparently for political reasons.

Effects on the peace process

20. Though, again, quite clearly beyond the scope of the task assigned by the resolution, the report sets out to assess effects of the Har Homa project on the peace process. In doing so, it asserts that the project "appears to represent, in the view of the Palestinian people, the largest single negative factor in the breakdown of the peace process and the fomenting of unrest" in the region.

21. If the authors of the report considered themselves authorized to give an assessment of current attitudes towards the breakdown in the peace process, they could perhaps have given some attention to the continued Palestinian breaches of the Interim Agreement, particularly in the field of fighting terrorism, the sanctioning of the murder of individuals selling land to Israelis and the incitement by the Palestinian leadership that continued unabated throughout the period under review in the report.

22. At the very root of the peace process lies a commitment by the two sides to resolve outstanding issues through negotiations. Notwithstanding this commitment, expressed by Yasser Arafat in his letter to the late Prime Minister Yitzchak Rabin on 9 September 1993, and restated in every one of the Israel-PLO agreements, the Palestinian leadership continues in its attempts to bypass face-to-face negotiations and bring international pressure to bear on Israel. Sadly, the report, and through it the United Nations, repeatedly demonstrates its willingness to be an accomplice in these attempts.

23. The sanction given by the report to "Palestinian views" that the Har Homa project represents the most significant factor in "the fomenting of unrest" is

particularly troubling. The implication that incitement to violence and violence itself is a legitimate and understandable response to political differences is irresponsible in the extreme and can only be considered complicity in the repeated deliberate attempts to escalate artificially violence in the territories.

Other issues addressed in the report

24. Beyond the analysis of the effects of the Har Homa building project outlined above, the report goes on to provide a platform for every conceivable allegation against Israel, without any substantiation and irrespective of its relation to the task assigned by the resolution. Among the more serious allegations presented unchallenged by the report are the following.

Arab housing

25. As regards the building of homes for Arabs in Jerusalem, the report makes cursory reference to the Government of Israel's promise to build an additional 3,500 housing units for Palestinians in Jerusalem and states that these are not to be built at Har Homa. In fact, these housing units are in addition to 2,500 housing units to be built for Arabs as part of the total Har Homa project.

26. In this regard, the report also charges that only 600 housing units have been built by the Government since 1967 for the Arab population. In fact, as the authors of the report should be aware, the tendency in the Arab sector is to encourage private building rather than government building. A truer picture of the state of Arab housing in Jerusalem, therefore, is given by the tax records, which show that in 1967 there were 12,200 apartments in the Arab sector, while in 1995 the number had reached 27,066 - an increase of 122 per cent. The growth in the Jewish sector during the same period was less - 113 per cent.

Settlement activity

27. The report's assertion that settlement activity, including the "commencement of new settlements" continued throughout the period under review, contradicts the report's own finding, in paragraph 15, that the Har Homa project is the first "new settlement" commenced by the current Israeli Government. It also blatantly ignores the simple fact that no new settlements have been constructed by the current Israeli Government in the West Bank or the Gaza Strip.

28. The report cites unidentified reports, stating that 30,000 dunums of "Palestinian land in the West Bank" have been expropriated by Israel. In fact, Israel does not expropriate any private land for the purpose of establishing settlements. Settlements have been established on public land, and only after an exhaustive judicial investigation has confirmed that no private rights have been infringed upon.

Residency rights

29. The report charges that Israel has implemented measures in an attempt to alter the character, legal status and demographic composition of Jerusalem,

including the revocation of residency rights and confiscation of identity cards. In fact, Israel has not revoked the residency of any Palestinian who is legally resident in Jerusalem. These Palestinians, like any other individual who has lived in Israel continuously, can continue to do so without loss of any benefit to which they are entitled. As in other countries, permanent residents who have not requested citizenship are subject to the normal rules that apply to all other permanent residents living in Israel.

30. It must be emphasized that these provisions apply equally to all permanent residents of the State of Israel and not just to "non-Jews", as stated in the report. These provisions have been in effect for many years and no change has been made in them recently.

Application of fourth Geneva Convention

31. The report charges that Israel has not "accepted the de jure applicability of the fourth Geneva Convention of 1949" to the territories. Israel's position in this regard is well known, but not reflected in the report. Under article 2, the Convention is only applicable to an occupation of "the territory of a High Contracting Party", that is, territory which was initially in the control of a legitimate sovereign. Thus, it cannot apply to territories such as the West Bank and the Gaza Strip, which were formerly occupied and not under a legitimate sovereign. Nonetheless, in order to ensure that the humanitarian protection of the local population does not suffer as a result of formalistic or juridical issues, Israel has undertaken to act de facto in accordance with the humanitarian provisions of the Convention.

32. The report's criticism of Israel for failing to apply the Convention de jure would seem to imply that such application is the norm in cases of occupation. In fact, despite the many examples of actual occupation by signatories of the Convention, the application of the Convention's provisions by Israel is the first and only time they have been applied in the history of the Convention.

Restrictions on movement

33. The report criticizes Israel for frustrating the "principle of territorial integrity as enunciated in the Oslo accords", by implementing restrictions on the movements of persons and goods. The implication that Israel is thus breaching the agreements is misleading; under the security provisions of the Interim Agreement, Israel has the specific right to invoke partial or full closures, as necessary.

34. It should be remembered that the closure was put in force following a spate of suicide bombings, which claimed the lives of over sixty people, Israelis and others, including Palestinians. Moreover, these bombings occurred as previous restrictions on the movement of Palestinians into Israel were being relaxed, and one attack was the specific result of the exploitation of a transfer point for goods from Gaza to Israel. At the present time, there is in fact no closure per se. Approximately 65,000 Palestinians have received permits to enter Israel. This number continues to increase, and the flow of goods to and from the Palestinian areas is unimpeded. Security checks have become more efficient,

enabling trucks carrying commercial cargo to move on the roads without any undue delay or hindrance.

35. The report also charges that restrictions hamper the work of United Nations officials and projects, ignoring the daily contact and efforts made by Israel to ease the work of the United Nations agencies, notwithstanding the security risks involved.

Safe passage, Gaza seaport, Dahaniya airport

36. The report's reference to the fact that safe passage arrangements have not been established and seaport and airport arrangements have not been agreed upon is disingenuous, to say the least. In order to be implemented, these three subjects require a series of issues to be resolved between the two sides. The refusal of the Palestinian side to conduct negotiations with Israel on these issues is the only obstacle to their implementation.

37. In the case of safe passage, a draft document has been negotiated in which almost all outstanding differences have been resolved. With regard to the seaport and airport, the Palestinian side has preferred to attempt to create unilateral facts on the ground rather than coordinate them with Israel, as it undertook to do in the Interim Agreement. Thus, although the Interim Agreement provides that all aspects relating to the establishment of a port in the Gaza Strip are to be discussed and agreed between the two sides, the Palestinians commenced construction work on an old wharf in the Gaza Strip with the declared intention of making this into a port. Similarly, the Palestinian side constructed an airport in Dahaniya in direct violation of the Interim Agreement and subsequent agreements between the two sides. Israel awaits the Palestinian side's return to the negotiating table so that these issues may be resolved.

Further redeployment

38. The report charges that the situation has been further aggravated by the Israeli decision to "limit" the second phase of the redeployment to "only 9 per cent of the West Bank". If the report's authors wish to set themselves up as arbiters of the peace process agreements, the very least that could be expected is familiarity with the terms of these agreements. The Interim Agreement provides that the commitment to effect further redeployment is to be "commensurate with the assumption of responsibility for public order and internal security by the Palestinian police". In other words, Israel's obligation to redeploy forces further in the West Bank is dependent upon the Palestinian police proving itself capable of exercising its security responsibilities. The report, however, does not give any consideration to the exercise of security responsibility by the Palestinian side.

39. Moreover, the extent of the first two stages of further redeployment, and the question of whether these are to take place in areas B or C is not set out in the Interim Agreement, but rather left to be determined exclusively by Israel. Nonetheless, the report finds no difficulty in passing its own judgement on the scope of the redeployment.

Security measures

40. Among other issues raised in the report are allegations of the abuse of security measures. The unsubstantiated nature of these allegations defies a detailed response. However, once again, one can only wonder at the irresponsible approach that guided the authors of the report to address these security issues without considering that there was any need to mention the terrorist attacks that give rise to the necessity for such preventive or deterrent measures.

41. Thus, the report sees fit to raise charges of administrative detention, mistreatment, curfews and house demolition against Israel but not to mention the inseparable fact that terrorist attacks since the start of the peace process have killed 241 Israelis 143 of them civilians. During the same period, terrorists have injured 1,343 Israelis, 669 of them civilians. Nor did the report see fit even to consider the agonizing dilemma facing the State of Israel in balancing its duty to protect the lives of its inhabitants from terrorist attacks and its obligation to respect basic human rights, including those of terrorists under investigation. It appears that on these issues, like many others, Israel once again has been made to pay a price in public forums for its candid and democratic debate over sensitive issues, which, in many other countries, are never permitted to be brought out into the open.

Conclusion

42. The report bears little or no relation to the task assigned by resolution ES-10/2. It makes no effort to understand or convey the complexities of the issues it raises. It is content to present uncorroborated reports as fact and to parrot partisan political views without question or criticism. The focus of the report is deliberately blinkered: it focuses on Israel's security measures in response to terrorist attacks without even considering the terrorism and incitement that create the need for such measures. In a deeply troubling display of irresponsibility it blames Israel for "fomenting unrest" in the territories, thus absolving the Palestinian side from any responsibility for inciting and escalating such violence. The report takes judgemental positions on issues agreed to be negotiated between the two sides in the final status negotiation. Far from contributing in any way to resumption of peaceful negotiations, the report conveys a clear message to the Palestinian side, that the United Nations is a convenient and willing forum for bypassing the peace process.

43. Those actively involved in escalating violence and trying to undermine the peace process will draw considerable encouragement from this document. But those who hold out hope for peaceful resolution of differences through negotiation can only be seriously disappointed.